

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

DION ROBINSON
PLAINTIFF,

VS.

DON PARKER
DEFENDANT.

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CASE NO.: 1:07 CV 541

ANSWER

COMES NOW Defendant, Don Parker, and answers the Plaintiff's Complaint as follows.

INTRODUCTION

1. Defendant denies the allegations of paragraph one (numbered one) of Plaintiff's Complaint.

JURISDICTION

2. The Defendant admits the Court has subject matter jurisdiction over this action. All other allegations are denied.

3. The Defendant admits venue for this action is proper in the United States District Court for the Middle District of Alabama, Southern Division. All other allegations are denied.

STATEMENT OF ALLEGATIONS

4. Defendant denies the allegations of paragraph four (numbered 4) of Plaintiff's Complaint.

5. Defendant denies the allegations of paragraph five (numbered 5) of Plaintiff's Complaint.

6. Defendant denies the allegations of paragraph six (numbered 6) of Plaintiff's Complaint.

CLAIMS FOR RELIEF

7. Defendant denies the allegations of paragraph seven (numbered 7) of Plaintiff's Complaint.

FIRST DEFENSE

To the extent the Plaintiff failed to mitigate his alleged damages, if any, the Defendant is entitled to an offset for any amount he earned or could have earned.

SECOND DEFENSE

The Defendant acted with just cause at all times.

THIRD DEFENSE

The Defendant acted reasonably at all times.

FOURTH DEFENSE

The Defendant pleads qualified immunity as a defense.

FIFTH DEFENSE

The Defendant pleads immunity as a defense.

SIXTH DEFENSE

The Defendant pleads it had a legitimate, non-discriminatory reason for its actions.

SEVENTH DEFENSE

The Defendant pleads judicial estoppel as a defense.

EIGHTH DEFENSE

The Defendant pleads collateral estoppel as a defense.

NINTH DEFENSE

The Defendant pleads equitable estoppel as a defense.

TENTH DEFENSE

The Defendant pleads estoppel as a defense.

ELEVENTH DEFENSE

The Defendant pleads fraud as a defense.

TWELFTH DEFENSE

The Defendant pleads good faith.

THIRTEENTH DEFENSE

The Defendant pleads the defense of waiver.

FOURTEENTH DEFENSE

The Defendant pleads that the Plaintiff failed to exhaust all administrative remedies.

FIFTEENTH DEFENSE

The Defendant pleads that Plaintiff was afforded the opportunity for a termination hearing before the City Council, who is the final decision maker, but instead chose to resign.

SIXTEENTH DEFENSE

The Plaintiff's damages claim is limited by misconduct that independently would have resulted in his termination. See McKennon v. Nashville Banner Publ'g Co., 513 U.S. 352 (1995).

NOTICE OF INTENTION TO PURSUE ATTORNEYS' FEES

Defendant asserts that this action is groundless, frivolous, unreasonable, and/or without foundation and brought in bad faith. Defendant intends to pursue attorney's fees against the Plaintiff.

Dated this the 2nd day of November, 2007.

/s/ Steadman S. Shealy, Jr.

Steadman S. Shealy, Jr. (SHE023)

ASB 2193-Y88S

Attorney for Defendant:

Don Parker

OF COUNSEL:

SHEALY, CRUM & PIKE, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day mailed a copy of the foregoing, properly addressed and postage prepaid, to:

Malcolm R. Newman

P.O. Box 6137

Dothan, Alabama 36302

This the 2nd day of November, 2007.

/s/ Steadman S. Shealy, Jr.